REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks.

Pending Claims

Claims 1, 2, 4, 5, and 7-48 are pending in the application, with claims 1, 8, 36, and 40 being independent. Applicants have amended claims 1-2, 4-5, 7-11, 15-17, 21-23, 29-31, 33, 36-48 herein. No new matter has been added.

Unless explicitly stated otherwise, none of the amendments to the claims were made for reasons substantially related to the statutory requirements for patentability. Furthermore, unless stated otherwise, the amendments to the claims were made to simply to make express what had been implicit in the claims as originally worded and therefore are not narrowing amendments that would create any type of prosecution history estoppel.

Specification/Claim Amendments

Applicants submit that all claim amendments are supported by the specification and no new matter has been added.

More specifically, certain claims have been amended to add features dealing with the defibrillator being OFF or ON. The specification makes clear that the defibrillator has an OFF/ON button and that the active status indicator functions when the AED is OFF or ON. See e.g., paragraphs [0052] – [0055].

In addition, a feature associated with self-tests and intervals therebetween has been added. Intervals and the concept of an ultimate self-tests (i.e., the last conducted self-test) are inherent in the concept of self-tests that occur at various times, such as daily, weekly, monthly, or quarterly. See e.g., paragraph [0045].

Further features of the operation of the active status indicator (ASI) throughout an interval have been added. As the specification makes clear, the ASI blinks based on combinations of operational state and whether the AED is ON or OFF.

Claim Rejections Under 35 U.S.C. §112, second paragraph

In the Office Action, the Examiner stated in Claims 9, 15, and 41 that the feature of "an electrode pad assembly" has insufficient antecedent basis. While Applicants disagree with this assertion by the Examiner, Applicants nevertheless have amended claims 9, 15, and 41 to remove the "electrode pad assembly" from those claims. Instead, those claims recite only the "electrode pads," which also were referenced previously in each of those claims. Accordingly, Applicants request withdrawal of the claim rejections under 35 U.S.C. § 112, second paragraph.

Claim Rejections Based on Fincke et al. (US 5,470,343)

In the Office Action, the Examiner rejected Claims 1-2, 4-5, 8, and 36-40 as being anticipated by Fincke (U.S. Patent No. 5,470,343) or, in the alternative, obvious over Fincke alone. Claims 1, 8, 36, and 40 are independent claims.

Fincke does not anticipate or render obvious Applicants' pending claims

Independent Claims 1 and 8

As to amended claim 1, Applicants submit that Fincke does not disclose, teach, suggest, or make obvious at least the feature of:

> *an active status indicator comprising a light source that illuminates, the light source operated autonomously by the programming, wherein the light source has a first illumination continually during an interval to indicate to an observer that the defibrillation circuitry is OFF and the ultimate self-test has determined that the defibrillation circuitry is ready to operate normally when turned ON and that presently maintenance is not required.*

As Fincke makes clear, portable AEDs are battery powered devices that *may* need backup power supplies. Col. 1, lines 8-33. The portable AED 16 illustrated in Fincke has a battery 54, see Figure 1; thus, it is a standalone device. As a result, the invention of Fincke would be interpreted by one having ordinary skill in the art as a supplemental power supply for a portable AED that is used when desired (e.g., for charging the battery 54), or when the battery is not available when called upon. See Col. 5, lines 30-31. Thus, if the battery 54 is available, the power supply 10 is not necessary to operate the portable AED 16.

In the Office Action, the Examiner finds that LED 52e of Fincke is the claimed active status indicator. Applicants respectfully disagree with this interpretation of Fincke. As to the LEDs 52 of Fincke, all are associated with a power supply 10, which may be attached to a portable AED 16. See Figure 4. LED 52e is "activated when the power supply needs to be connected to a source of AC power, which occurs when the power supply is attached to the defibrillator and not connected to a source of AC power." Col. 5, lines 33-37. In other words, when LED 52e is illuminated, it is indicating to an operator a ***non-operational condition*** (not ready to operate) of the power supply 10 that can be corrected by connecting the power supply to an electrical source (i.e., plugging it in).

As the portable AED 16 can operate with or without the power supply 10, LED 52e when illuminated says nothing about the operational status of the portable AED 16. As LED 52e is not indicating that the defibrillation circuitry is ***ready to operate normally*** (operational as opposed to non-operational) as required by amended Claim 1, for at least this reason, Fincke does not anticipate amended Claim 1.

Further, the illumination of the LEDs 52, including LEDs 52e and 52c, is not subject to self-tests based on programming running on a computer that is part of the defibrillation circuitry as required by amended Claim 1. More specifically, the connection of the power supply 10 and portable AED 16 is through a series of pins 34. See Figure 4. While the non-power pins transmit operational information (e.g., pin 34c Boost request, and 34d on/off status), none of these pins transmits data on the results of self-tests running on the portable AED 16 to the power supply 10. Thus, self-tests running on the portable AED 16 do not control the illumination status of any of the LEDs 52, which in the case of LEDs 52b, 52c, and 52d are controlled by microprocessor 76 located within the power supply 10. See Figure 4.

As all the LEDs 52 on the power supply 10 are not controlled by self-tests running on the defibrillator as required by claim 1, for at least this reason, none of the LEDs 52 of Fincke can be the claimed active status indicator. Thus, Fincke does not anticipate or render obvious amended Claim 1.

To further prosecution, LEDs 52a through 52d cannot be the active status indicator. More specifically, LED 52a is lit when the power supply is connected to a source of AC power and capable of operating the defibrillator and/or charging a battery 54 of the defibrillator. Col. 5, lines 26-29. LED 52b is lit when battery 54 is installed in the defibrillator and is receiving a charge. Col. 5, lines 29-31. LED 52c is illuminated when the battery 54 is fully charged. Col. 5, Lines 30-31. An illuminated LED 52c merely indicates that the battery 54 can accept no more charge. *It does not indicate that the battery has insufficient charge, thus the status of the defibrillation circuitry*. LED 52d only illuminates based on a non-operative condition. Col. 5, lines 32-33. The active status indicator as claimed in amended Claim 1 illuminates to indicate an *operative* condition. Thus, LEDs 52a through 52d cannot be the active status indicator as recited in amended Claim 1.

Amended Claim 8 has a similar feature as to that discussed above for amended Claim 1; thus, it is allowable based on the reasoning presented above as to amended Claim 1.

Independent Claims 36 and 40

Claim 36 contains the features of:

> *conducting a self-test with the defibrillation circuitry OFF to evaluate the operability of the defibrillation circuitry;*
>
> *providing an active status indicator comprising a light source that illuminates, the light source operated by programming running on the defibrillation circuitry, and*
>
> *if the self-test determines that the defibrillation circuitry is ready to operate normally, illuminating the light source with a first illumination continually during an interval until a subsequent self-test.*

As discussed above, the illumination of the LEDs 52 in Fincke is not based on self-tests of the defibrillation circuitry. Instead, the illumination of individual LEDs 52 is based on such factors as whether the power supply 10 is connected to an AC source or what the programming of the power supply deduces based on its connection to the portable AED 16. Specifically as to LED 52e, the illumination of LED 52e merely indicates that the power source 10 is *non-operational*, since it is not plugged in. As to LED 52c, its illumination is a result of how programming running on microprocessor 76, which is in the power supply 10, determines the status of the battery in the portable AED 16 and not how self-tests running on the portable AED assess the operational status of the battery 54. Based on the foregoing, for at least this reason Fincke does not anticipate or render obvious amended Claim 36.

Amended Claim 40 has a similar feature as to that discussed above for amended Claim 36; thus, it is allowable based on the reasoning presented above as to amended Claim 36.

In making the alternative obviousness rejection based on Fincke alone, the Examiner indicates that Fincke necessarily includes an OFF/ON switch. Based on the foregoing, Applicants submit that this issue is moot as other claim features are not present in Fincke.

Claim Rejections Based on Olson et al. (US 5,645,571)

In the Office Action, the Examiner rejected Claims 1-2, 8-10, 12-16, 19-22, 25-30, 33-38, and 40-48 as being obvious over Olson et al. (U.S. Patent No. 5,645,571) alone or, in the alternative, in view of Fincke. Claims 1, 8, 36, and 40 are independent claims.

Olson alone does not render obvious Applicants' pending claims

The Examiner contends that the maintenance indicator 20 of Olson is the claimed active status indicator. The Examiner further concludes that the maintenance indicator 20 does not expressly teach the employment of a light source, but that it would have been obvious to modify the maintenance indicator to have a light source. In other words, a mere shedding of light on to the maintenance indicator 20 satisfies the features associated with the claimed active status indicator. Applicants respectfully disagree.

Independent Claim 1

This specific rejection was addressed in the response to the Office Action of 04/16/2009. In that response, to exclude an interpretation of the claim feature as covering a simple illumination (i.e., shedding light on), or lighting, of the maintenance indicator, the feature of "capable of illumination," at the suggestion of the Examiner, was replaced with the positive recitation that the active status indicator "illuminate," in all the then pending claims. See Response Dated 12/19/2008, specifically Telephonic Interview Summary of discussion on October 30, 2008, and amended claims. Presently, amended Claim 1 contains the feature the light source have "a first illumination continually during an interval." Applicants consider this language a positive recitation that excludes simple illumination (i.e., shedding light on), or lighting, of the maintenance indicator.

That said, even if the maintenance indicator 20 is modified as suggested by the Examiner to have a light that sheds light on to it, the light is not *necessarily* providing the status of the defibrillation circuitry as required by amended Claim 1. More specifically, the rotating disc maintenance indicator 20 of Olson is capable of indicating that the AED is ready to operate or not ready to operate. Amended claim 1 has the feature that the "first illumination . . . indicate to an observer that the defibrillation circuitry is ready to operate normally when turned ON." As the added light is simply shedding light on the maintenance indicator 20, it does not *necessarily* change to distinguish a change in what the maintenance indicator 20 is indicating as to the operational status of the AED. As such, an "illuminated" maintenance indicator does not meet the features of amended Claim 1. Thus, amended Claim 1 is not rendered obvious in view of Olson and is allowable.

Independent Claims 8, 36, and 40

Amended claims 8, 36 and 40 have similarly recited features as to those discussed above for amended Claim 1; thus, these claims are allowable over Olson alone for the reasons discussed above.

Olson in view of Fincke does not render obvious Applicants' pending claims

In the alternative, the Examiner stated that it would have been obvious to modify the maintenance indicator 20 of Olson with an LED as taught by Fincke.

Olson does not disclose the structure of the maintenance indicator 20, only that it changes colors. The maintenance indicator 20 of Olson is not necessarily a light. In essence, based on the description provided, someone having ordinary skill in the art could interpret the maintenance indicator 20 to be a disc that flips to display to an observer different colors.

As Olson is a battery powered device, Applicants submit that a person having ordinary skill in the art could interpret the maintenance indicator 20 to be a flip-disc display. Flip-disc displays, well known in the art at the time of the filing of Olsen, use an electrical pulse to change the color viewed. More specifically, the flip, or apparent change in color, is accomplished by an electrical pulse that causes a disc to change position, and once changed the disc remains in its new position without needing any further power.

Thus, if a light replaced the maintenance indicator 20, the light at best would blink once in response to the electrical pulse. Without additional programming, the light would not have an illumination continually during the interval as required by amended Claim 1. It would also require Olson's AED to provide continuous power during the interval where it is now only providing a pulse at the beginning of the interval. Thus, the proposed modification is not a simple substitution of one item for another. In addition, it changes a principal of operation of Olson in that what was a continuous display of status becomes a single blink. As such, the Examiner's rationale for why the proposed modification is obvious is flawed and the proposed modification is not obvious.

The Examine further mentions the open-lid self-test as occurring prior to a rescue. The open-lid self test occurs at the start of the rescue sequence. Col. 4, lines 55-56. Amended Claim 1 has the feature that the AED is OFF. Since opening the lid of Olson always initiates a rescue, thus ON as defined in amended Claim 1, the LEDs are never visible to an observer when the AED is OFF. Thus, the LEDs of Olson can never be the active status indicator as claimed in amended Claim 1.

Additionally, as discussed previously with regard to Fincke, LED 52e of Fincke is not an active status indicator as recited in Applicants' claims. Accordingly, substituting the LED 52e of Fincke with the rotating disc of Olson would not create a device having all of the features recited in Applicants' claims.

For the reasons stated herein, the combination of Olson and Fincke does not render obvious Applicants' claim 1.

Independent Claims 8, 36, and 40

Amended claims 8, 36, and 40 have similarly recited features as to those discussed above for amended Claim 1; thus, these claims also are allowable over Olson in view of Fincke for the reasons discussed above.

Summary

Applicants submit that independent claims 1, 8, 36, and 40 are patentable over the documents cited by the Examiner. Additionally, the remaining claims depend from one of the independent claims either directly or indirectly and a submitted to be patentable for similar reasons. The dependent claims also recite additional features further defining the present invention over the cited documents, and Applicants submit that the cited documents do not teach or suggest integrating those features into the presently claimed invention. Accordingly, Applicants request separate and individual consideration of each dependent claim.

No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Applicants have not addressed each specific rejection of the independent and dependent claims because Applicants submit that the independent claims are allowable over the documents of record, as discussed above. Applicants have not acquiesced to any such rejection and reserve the right to address the patentability of any additional claim features of any additional claim features in the future.

CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed October 13, 2009. Applicants submit that the present application is in condition for allowance and respectfully request such action.

If any issues remain that can be resolved with an Examiner's Amendment or a telephone conference, please contact Applicants' representative at the number provided below.

Respectfully submitted,

/William O. Isaacs, II/

William O. Isaacs, II
Reg. No. 44,165

King & Spalding LLP
34th Floor,
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Telephone: (404) 572.4600